

§ 98.4

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available monitoring methods, in cases where an extension has been granted under § 98.3(d).

(iv) Supporting documentation showing that it is not practicable to isolate the process equipment or unit and install the measurement device without a full shutdown or a hot tap, and that there was no opportunity during 2010 to install the device. Include the date of the three most recent shutdowns for each relevant process equipment or unit, the frequency of shutdowns for each relevant process equipment or unit, and the date of the next planned process equipment or unit shutdown.

(v) Include a description of the proposed best available monitoring method for estimating GHG emissions during the time prior to installation of the meter.

(5) *Approval criteria.* The owner or operator must demonstrate to the Administrator's satisfaction that it is not reasonably feasible to install the measurement device before April 1, 2010 (or by the expiration date for the use of best available monitoring methods, in cases where an extension has been granted under paragraph (d) of this section) without a process equipment or unit shutdown, or through a hot tap, and that the proposed method for estimating GHG emissions during the time before which the measurement device will be installed is appropriate. The Administrator will not initially approve the use of the proposed best available monitoring method past December 31, 2013.

(6) *Measurement device installation deadline.* Any owner or operator that submits both a timely initial notice of intent and a timely completed extension request under paragraph (j)(3) of this section to extend use of best available monitoring methods for measurement device installation must install all such devices by July 1, 2011 unless the extension request under this paragraph (j) is approved by the Administrator before July 1, 2011.

(7) *One time extension past December 31, 2013.* If an owner or operator determines that a scheduled process equipment or unit shutdown will not occur by December 31, 2013, the owner or operator may re-apply to use best available monitoring methods for one addi-

tional time period, not to extend beyond December 31, 2015. To extend use of best available monitoring methods past December 31, 2013, the owner or operator must submit a new extension request by June 1, 2013 that contains the information required in paragraph (j)(4) of this section. The owner or operator must demonstrate to the Administrator's satisfaction that it continues to not be reasonably feasible to install the measurement device before December 31, 2013 without a process equipment or unit shutdown, or that installation of the measurement device could only be done through a hot tap, and that the proposed method for estimating GHG emissions during the time before which the measurement device will be installed is appropriate. An owner or operator that submits a request under this paragraph to extend use of best available monitoring methods for measurement device installation must install all such devices by December 31, 2013, unless the extension request under this paragraph is approved by the Administrator.

[74 FR 56374, Oct. 30, 2009, as amended at 75 FR 39758, July 12, 2010; 75 FR 57685, Sept. 22, 2010; 75 FR 74816, Dec. 1, 2010; 75 FR 79134, Dec. 17, 2010; 75 FR 81344, Dec. 27, 2010; 76 FR 14818, Mar. 18, 2011; 76 FR 53065, Aug. 25, 2011; 76 FR 73899, Nov. 29, 2011]

§ 98.4 Authorization and responsibilities of the designated representative.

(a) *General.* Except as provided under paragraph (f) of this section, each facility, and each supplier, that is subject to this part, shall have one and only one designated representative, who shall be responsible for certifying, signing, and submitting GHG emissions reports and any other submissions for such facility and supplier respectively to the Administrator under this part. If the facility is required under any other part of title 40 of the Code of Federal Regulations to submit to the Administrator any other emission report that is subject to any requirement in 40 CFR part 75, the same individual shall be the designated representative responsible for certifying, signing, and submitting the GHG emissions reports and all such other emissions reports under this part.

(b) *Authorization of a designated representative.* The designated representative of the facility or supplier shall be an individual selected by an agreement binding on the owners and operators of such facility or supplier and shall act in accordance with the certification statement in paragraph (i)(4)(iv) of this section.

(c) *Responsibility of the designated representative.* Upon receipt by the Administrator of a complete certificate of representation under this section for a facility or supplier, the designated representative identified in such certificate of representation shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of such facility or supplier in all matters pertaining to this part, notwithstanding any agreement between the designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the designated representative by the Administrator or a court.

(d) *Timing.* No GHG emissions report or other submissions under this part for a facility or supplier will be accepted until the Administrator has received a complete certificate of representation under this section for a designated representative of the facility or supplier. Such certificate of representation shall be submitted at least 60 days before the deadline for submission of the facility's or supplier's initial emission report under this part.

(e) *Certification of the GHG emissions report.* Each GHG emission report and any other submission under this part for a facility or supplier shall be certified, signed, and submitted by the designated representative or any alternate designated representative of the facility or supplier in accordance with this section and § 3.10 of this chapter.

(1) Each such submission shall include the following certification statement signed by the designated representative or any alternate designated representative: "I am authorized to make this submission on behalf of the owners and operators of the facility or supplier, as applicable, for which the submission is made. I certify under penalty of law that I have personally

examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The Administrator will accept a GHG emission report or other submission for a facility or supplier under this part only if the submission is certified, signed, and submitted in accordance with this section.

(f) *Alternate designated representative.* A certificate of representation under this section for a facility or supplier may designate one alternate designated representative, who shall be an individual selected by an agreement binding on the owners and operators, and may act on behalf of the designated representative, of such facility or supplier. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) Upon receipt by the Administrator of a complete certificate of representation under this section for a facility or supplier identifying an alternate designated representative.

(i) The alternate designated representative may act on behalf of the designated representative for such facility or supplier.

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative.

(2) Except in this section, whenever the term "designated representative" is used in this part, the term shall be construed to include the designated representative or any alternate designated representative.

(g) *Changing a designated representative or alternate designated representative.* The designated representative or alternate designated representative identified in a complete certificate of representation under this section for a facility or supplier received by the Administrator may be changed at any time upon receipt by the Administrator of another later signed, complete certificate of representation under this section for the facility or supplier. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative or the previous alternate designated representative of the facility or supplier before the time and date when the Administrator receives such later signed certificate of representation shall be binding on the new designated representative and the owners and operators of the facility or supplier.

(h) *Changes in owners and operators.* In the event an owner or operator of the facility or supplier is not included in the list of owners and operators in the certificate of representation under this section for the facility or supplier, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the facility or supplier, as if the owner or operator were included in such list. Within 90 days after any change in the owners and operators of the facility or supplier (including the addition of a new owner or operator), the designated representative or any alternate designated representative shall submit a certificate of representation that is complete under this section except that such list shall be amended to reflect the change. If the designated representative or alternate designated representative determines at any time that an owner or operator of the facility or supplier is not included in such list and such exclusion is not the result of a change in the owners and operators, the designated representative or any alternate designated representative shall submit, within 90 days of making such determination, a certificate of representa-

tion that is complete under this section except that such list shall be amended to include such owner or operator.

(i) *Certificate of representation.* A certificate of representation shall be complete if it includes the following elements in a format prescribed by the Administrator in accordance with this section:

(1) Identification of the facility or supplier for which the certificate of representation is submitted.

(2) The name, organization name (company affiliation-employer), address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.

(3) A list of the owners and operators of the facility or supplier identified in paragraph (i)(1) of this section, provided that, if the list includes the operators of the facility or supplier and the owners with control of the facility or supplier, the failure to include any other owners shall not make the certificate of representation incomplete.

(4) The following certification statements by the designated representative and any alternate designated representative:

(i) “I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the facility or supplier, as applicable.”

(ii) “I certify that I have all the necessary authority to carry out my duties and responsibilities under 40 CFR part 98 on behalf of the owners and operators of the facility or supplier, as applicable, and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.”

(iii) “I certify that the owners and operators of the facility or supplier, as applicable, shall be bound by any order issued to me by the Administrator or a court regarding the facility or supplier.”

(iv) “If there are multiple owners and operators of the facility or supplier, as applicable, I certify that I have given a written notice of my selection as the

‘designated representative’ or ‘alternate designated representative’, as applicable, and of the agreement by which I was selected to each owner and operator of the facility or supplier.”

(5) The signature of the designated representative and any alternate designated representative and the dates signed.

(j) *Documents of agreement.* Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(k) *Binding nature of the certificate of representation.* Once a complete certificate of representation under this section for a facility or supplier has been received, the Administrator will rely on the certificate of representation unless and until a later signed, complete certificate of representation under this section for the facility or supplier is received by the Administrator.

(l) Objections Concerning a Designated Representative

(1) Except as provided in paragraph (g) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative, or the finality of any decision or order by the Administrator under this part.

(2) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative.

(m) *Delegation by designated representative and alternate designated representative.*

(1) A designated representative or an alternate designated representative may delegate his or her own authority, to one or more individuals, to submit

an electronic submission to the Administrator provided for or required under this part, except for a submission under this paragraph.

(2) In order to delegate his or her own authority, to one or more individuals, to submit an electronic submission to the Administrator in accordance with paragraph (m)(1) of this section, the designated representative or alternate designated representative must submit electronically to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(i) The name, organization name (company affiliation-employer) address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative.

(ii) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such individual (referred to as an “agent”).

(iii) For each such individual, a list of the type or types of electronic submissions under paragraph (m)(1) of this section for which authority is delegated to him or her.

(iv) For each type of electronic submission listed in accordance with paragraph (m)(2)(iii) of this section, the facility or supplier for which the electronic submission may be made.

(v) The following certification statements by such designated representative or alternate designated representative:

(A) “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed, and for a facility or supplier designated, for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as applicable, and before this notice of delegation is superseded by another notice of delegation under § 98.4(m)(3) shall be deemed to be an electronic submission certified, signed, and submitted by me.”

(B) “Until this notice of delegation is superseded by a later signed notice of delegation under § 98.4(m)(3), I agree to

maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under § 98.4(m) is terminated.”

(vi) The signature of such designated representative or alternate designated representative and the date signed.

(3) A notice of delegation submitted in accordance with paragraph (m)(2) of this section shall be effective, with regard to the designated representative or alternate designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of another such notice that was signed later by such designated representative or alternate designated representative, as applicable. The later signed notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(4) Any electronic submission covered by the certification in paragraph (m)(2)(v)(A) of this section and made in accordance with a notice of delegation effective under paragraph (m)(3) of this section shall be deemed to be an electronic submission certified, signed, and submitted by the designated representative or alternate designated representative submitting such notice of delegation.

[74 FR 56374, Oct. 30, 2009, as amended at 75 FR 79137, Dec. 17, 2010; 76 FR 73900, Nov. 29, 2011]

§ 98.5 How is the report submitted?

Each GHG report and certificate of representation for a facility or supplier must be submitted electronically in accordance with the requirements of § 98.4 and in a format specified by the Administrator.

§ 98.6 Definitions.

All terms used in this part shall have the same meaning given in the Clean Air Act and in this section.

Absorbent circulation pump means a pump commonly powered by natural gas pressure that circulates the absorbent liquid between the absorbent regenerator and natural gas contactor.

Accuracy of a measurement at a specified level (e.g., one percent of full scale or one percent of the value meas-

ured) means that the mean of repeat measurements made by a device or technique are within 95 percent of the range bounded by the true value plus or minus the specified level.

Acid Rain Program means the program established under title IV of the Clean Air Act, and implemented under parts 72 through 78 of this chapter for the reduction of sulfur dioxide and nitrogen oxides emissions.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's authorized representative.

AGA means the American Gas Association

Agricultural by-products means those parts of arable crops that are not used for the primary purpose of producing food. Agricultural by-products include, but are not limited to, oat, corn and wheat straws, bagasse, peanut shells, rice and coconut husks, soybean hulls, palm kernel cake, cottonseed and sunflower seed cake, and pomace.

Air injected flare means a flare in which air is blown into the base of a flare stack to induce complete combustion of gas.

Alkali bypass means a duct between the feed end of the kiln and the preheater tower through which a portion of the kiln exit gas stream is withdrawn and quickly cooled by air or water to avoid excessive buildup of alkali, chloride and/or sulfur on the raw feed. This may also be referred to as the “kiln exhaust gas bypass.”

Anaerobic digester means the system where wastes are collected and anaerobically digested in large containment vessels or covered lagoons. Anaerobic digesters stabilize waste by the microbial reduction of complex organic compounds to CO₂ and CH₄, which is captured and may be flared or used as fuel. Anaerobic digestion systems, include but are not limited to covered lagoon, complete mix, plug flow, and fixed film digesters.

Anaerobic lagoon, with respect to subpart JJ of this part, means a type of liquid storage system component that is designed and operated to stabilize wastes using anaerobic microbial processes. Anaerobic lagoons may be designed for combined stabilization and